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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MALAIKA BROOKS,

Plaintiff,

vs.

THE CITY OF SEATTLE, a municipal
corporation; THE SEATTLE POLICE
DEPARTMENT, an agency of the City of
Seattle; R. GIL KERLIKOWSKE, in his
individual capacity as Chief of the Seattle
Police Department; STEVEN L. DAMAN, in
his individual capacity as an officer of the
Seattle Police Department; DONALD M.
JONES, in his individual capacity as an
officer of the Seattle Police Department; and
JUAN M. ORNELAS, in his individual
capacity as an officer of the Seattle Police
Department,

Defendants.

CASE NO:

C 06-1681 LK

COMPLAINT FOR VIOLATION
OF CIVIL RIGHTS

JURY TRIAL DEMANDED



06-CV-01681-CMP

I. INTRODUCTION

1.1 This is an action for deprivation of civil rights under color of law, and for assault
and battery and negligence. This action arises out of both federal and state law for damages
resulting from the unlawful conduct of the City of Seattle, The Seattle Police Department, its
Chief of Police and its officers, employees and/or agents which resulted in the use of excessive

COMPLAINT
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ERIC ZUBEL P.C.
A PROFESSIONAL LAW CORPORATION
1420 Fifth Avenue, Suite 2200
SEATTLE, WA 98101
TEL (206) 613-4433
FAX (206) 613-4436

1 force in connection with the arrest of the plaintiff for a misdemeanor violation.

2 II. JURISDICTION AND VENUE

3 2.1. This Court has personal and subject matter jurisdiction over the plaintiff's civil
4 rights claims under Title 42, United States Code, § 1983, Title 28 United States Code, § 1331
5 and 1334(a)(3).

6 2.2. The acts and omissions complained of below occurred in King County,
7 Washington and the defendant City of Seattle is a municipal corporation located in King
8 County, Washington. The Seattle Police Department is an agency of the City of Seattle. Gil
9 Kerlikowske is a resident and citizen of King County, Washington. The individual defendants
10 are residents and citizens of King County, Washington.

11 2.3 Jurisdiction for the State law claims against all defendants is pursuant to the law
12 of the State of Washington and is conferred upon this court by the doctrine of pendent and
13 supplemental jurisdiction pursuant to 28 U.S.C. Section 1367.

14 2.4 At all times mentioned below, the plaintiff was and presently is a citizen of the
15 State of Washington.

16 2.5. Venue in this Court is lawful according to Title 28, United States Code, § 1391.

17 III. PARTIES

18 3.1. The plaintiff, Malaika Brooks ("Brooks"), a single woman, is domiciled in the
19 City of Seattle, Washington.

20 3.2. The defendant City of Seattle ("City") is a municipal corporation organized
21 pursuant to the law of the State of Washington and is sued in accordance with Title 42 United
22 States Code, § 1983, and under state law. The Seattle Police Department ("Police
23 Department") is an agency of the City of Seattle.

1 3.3 The defendant, R. Gil Kerlikowske, ("Kerlikowske") is, and was at all times
2 relevant, the Chief of Police of the Seattle Police Department and is sued in his individual
3 capacity.

4 3.4. The individual defendant, Sergeant Steven L. Daman ("Daman") is, and was at
5 all times relevant, an officer of the Seattle Police Department and is sued in his individual
6 capacity as an agent and an employee of the Seattle Police Department.

7 3.5. The individual defendant, Officer Donald M. Jones ("Jones"), is, and was at all
8 times relevant, an officer of the Seattle Police Department and is sued in his individual capacity
9 as an agent and an employee of the Seattle Police Department.

10 3.6. The individual defendant, Officer Juan M. Ornelas ("Ornelas"), is, and was at all
11 times relevant, an officer of the Seattle Police Department and is sued in his individual capacity
12 as an agent and an employee of the Seattle Police Department.

13 IV. FACTUAL ALLEGATIONS

14 4.1. On or about November 23, 2004, at approximately 8:30 a.m., Brooks was
15 driving her automobile north along Beacon Avenue South in the City of Seattle in the company
16 of her son, Jahrod, born October 24, 1993. Brooks was driving her son to school. Jahrod was,
17 and presently is, a student at the African American Academy located on Beacon Avenue South.

18 4.2 Brooks was lawfully operating her automobile according to the posted speed
19 limit of 20 miles per hour. As she approached the school zone, Brooks noticed a Seattle police
20 officer crouched in front of a Seattle police cruiser parked on the right side of the street near the
21 crosswalk at the school zone. Ahead of her Brooks observed a black Honda automobile which
22 appeared to be exceeding the speed limit pass by the police officer and disappear into traffic.
23 She then observed the officer stand up and point an object at her while at the same time

1 motioning her to pull over.

2 4.3. Brooks complied and brought her car to a stop next to the curb. The police
3 officer, later identified as Juan Ornelas, inquired of Brooks if she was aware of the reason why
4 she was being stopped. Brooks replied in the negative. Ornelas then informed her that she was
5 speeding in a school zone. Brooks informed Ornelas that she was not speeding and inquired of
6 him if he was aware of the fact that the black Honda appeared to be speeding. Ornelas then
7 asked for Brooks' driver's license which she gave him immediately. Brooks then instructed her
8 son, Jahrod, to get out of the automobile and proceed to school.

9 4.4. Ornelas then informed Brooks that she was being cited for speeding. Ornelas
10 then presented Brooks with a traffic citation and requested that she sign it. Brooks declined to
11 so because she believed that to do would be an admission of guilt. Ornelas then walked away.
12 A second police officer then approached her car, later identified as Donald M. Jones, who
13 asked her if she would sign the ticket. Brooks informed Jones that she would not sign the ticket
14 because it was her belief that she was not speeding and that to do so would be an admission of
15 guilt. Jones responded by displaying a radar gun indicating a speed of 35 miles per hour, to
16 which Brooks replied that she believed the radar gun was displaying the speed of the black
17 Honda, not her car.

18 4.5. Jones then inquired of Brooks, in a degrading and derogatory tone, if she could
19 read, and stated to her that by signing the ticket she was not admitting guilt. Brooks replied that she
20 would accept the ticket, but declined to sign it because she was not speeding. Jones then stated
21 that the law required her to sign the ticket. Brooks disagreed, stating that was not her
22 understanding of the law, at which point Jones stated that he would call his sergeant.

23 4.6. Brooks remained seated behind the wheel of her car for a few for minutes before

1 Sergeant Daman appeared and inquired of Brooks as to whether she would sign the ticket.
2 When Brooks declined to do so, Daman instructed Jones and Ornelas to "*book her.*" Ornelas
3 then told Brooks to get out of her car. Brooks asked Jones why she was being asked to get out
4 of her car. Jones then displayed what appeared to be a black object and asked Brooks if she
5 was aware of what he was holding and what it could do to her. Brooks replied in the negative
6 and informed Jones that she was pregnant and needed to use a restroom. Jones responded by
7 inquiring of Brooks, "*[H]ow pregnant are you?*" Brooks responded that her child was due in
8 less than 60 days.

9 4.7. Jones and Ornelas then positioned themselves next to the driver's side of
10 Brooks' car and while in her presence and within her hearing, discussed whether they should
11 "Taser" her in her thigh or in her stomach. They decided to Taser her thigh. At this time,
12 Brooks was totally unfamiliar with the Taser device and other than to hear a crackling sound
13 while it was being held by Jones, she had no understanding of the purpose of the device or the
14 manner in which it operated, or that it was designed to produce a painful and disabling
15 electrical shock when placed against the human body.

16 4.8. Ornelas then opened the driver's side door of the automobile and forcibly
17 twisted Brooks' left arm behind her back while at the same time Officer Jones squeezed around
18 Officer Ornelas and administered a Taser shock to Brooks' left thigh. Frightened and in pain,
19 from the electrical shock, Brooks immediately began to scream for help, while at the same
20 time blowing her car horn. Jones immediately administered a second Taser shock to her left
21 arm near the shoulder, and she stopped blowing the horn. Two or three seconds later, Jones
22 administered a third Taser shock to the left side of Brooks' neck and she fell over to the right,
23 unable to move.

1 4.9. Ornelas and Jones then removed Brooks' from her automobile while Ornelas
2 still continued to twist her left arm behind her back while dragging her out of her car into the
3 street. Both officers placed their bodies on top of Brooks while she was lying face down in the
4 middle of the street as she was being handcuffed by Ornelas. Terrified and frightened, Brooks
5 asked the officers to please get off of her because she was in pain and concerned for the safety
6 of her unborn child.

7 4.10. After handcuffing Brooks, Ornelas slowly brought her to her feet, as she was
8 unable to stand on her own. He then transported her in a Seattle police cruiser to the South
9 Precinct where she was then examined by Seattle Fire Department medics who determined that
10 she was pregnant. She was then photographed by Sergeant Daman and transported to Harbor
11 View Hospital where she was treated for her injuries. Brooks was examined further to
12 determine if there existed any evidence of injury or stress to her unborn child. She was then
13 transported to the King County Jail and incarcerated on charges of failure to obey a police
14 officer and resisting arrest.

15 4.11 Brooks was tried on the charge of resisting arrest before the Municipal Court of
16 the City of Seattle on May 4, 2005. The charge was dismissed on May 18, 2005.

17 4.12 A claim for damages was served and presented to the Clerk of the City of Seattle
18 on December 13, 2005 as required by state law. More than 60 days has elapsed since the
19 presentation of the claim and the City has failed to take any action.

20 4.13 In addition to the medical care and treatment which Brooks received on the day
21 of her arrest, she has continued to seek medical care and treatment for the scarring and
22 disfigurement caused by the application of the taser to her body.

23 ////

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1 **V. FIRST CLAIM FOR RELIEF**
2 **(Against R. Gil Kerlikowske in his Individual Capacity as Seattle Chief of Police for**
3 **Violations of Civil Rights Under 42 U.S.C. § 1983)**

4 5.1. Plaintiff incorporates herein by this reference 1.1 through 4.13 above.

5 5.2. The individual defendant, Kerlikowske, in his capacity as Chief of the Seattle
6 Police Department is responsible for the promulgation, implementation and enforcement of the
7 policies and procedures of the Seattle Police Department.

8 5.3. Acting in his individual capacity as Chief of the Seattle Police Department,
9 Kerlikowske is also responsible for the training and supervision of the individual defendants
10 and officers of the Department. Acting under color of law, and in his capacity as Chief of
11 Police, Kerlikowske failed to adequately supervise and train Seattle police officers in the proper
12 use of non-lethal force in misdemeanor arrests by permitting and condoning the improper use
13 of the M-26 Taser.

14 5.4. Kerlikowske has and continues to be reckless and indifferent by allowing the
15 use of excessive force in permitting and condoning the improper use of the Taser by police
16 officers to make an arrest. Kerlikowske has thus adopted, implemented, tolerated, and
17 condoned policies which permitted, facilitated and allowed the violation of Brooks' civil rights
18 and by his negligence, recklessness and indifference set in motion the series of events which
19 culminated in the use of excessive force against Brooks by the arresting officers Daman, Jones
20 and Ornelas, foreseeably resulting in the damages she has suffered as more fully set forth
21 below.

22 **VI. SECOND CLAIM FOR RELIEF**
23 **(Against the individual police officers Daman, Jones and Ornelas for**
 Violations of Civil Rights Under 42 U.S.C. § 1983)

 6.1. Plaintiff incorporates herein by this reference 1.1 through 5.4 above.

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6.2. The defendant police officers, Daman, Jones and Ornelas, and each of them, acting in their individual capacities as officers of the Seattle Police Department and under color of law, acted wantonly and oppressively by repeatedly applied the Taser to the body of Brooks and her unborn child while making a misdemeanor arrest under circumstances where she was not resisting arrest, posed no threat of harm to them or others, nor displayed any intention to flee the scene of this traffic stop. This unnecessary and unwarranted use of non-lethal force was an unlawful and excessive use of force to make an arrest in violation of Brooks' rights under the laws of the United States, the First, Fourth, Eighth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983.

6.3. The acts of these individual Seattle police officers also violated the policies and procedures of the Seattle Police Department governing the use of non-lethal force to make a misdemeanor arrest.

6.4. As a direct and proximate result of these willful, wanton and oppressive acts, the individual police officers, Daman, Jones and Ornelas are liable to Brooks for the damages she suffered as more fully described below.

VII. THIRD CLAIM FOR RELIEF
(Against the City of Seattle and the Seattle Police Department
for Violations of Civil Rights Under 42 U.S.C. § 1983)

7.1. Plaintiff incorporates by this reference paragraphs 1.1 through 6.4 above.

7.2. The City is a political subdivision in the State of Washington and a "person" for the purposes of 42 U.S.C. § 1983 and § 1988.

7.3. Brooks had a federally-protected interest in life and liberty, including freedom from unlawful and excessive use of police force. These rights arise under the First, Fourth, Eighth and Fourteenth Amendments of the Constitution of the United States.

1 7.4. The failure of the defendant City and its Police Department to provide proper
2 training and supervision regarding the lawful use of force to effectuate the arrest of Brooks is a
3 reckless disregard and/or a deliberate indifference to her safety and that of her unborn child.

4 7.5. The Police Department is liable under 42 U.S.C. § 1983 for such deliberate
5 indifference and the failure to adopt appropriate policies and training to discourage and prevent
6 the unlawful and excessive use of non-lethal force by its police officers.

7 7.6. The improper use of a Taser device by the Police Department is reckless and
8 indifferent to the safety of persons subject to arrest. Alternatively, the defendant City, acting
9 through its Police Department, failed to properly train and supervise its police officers in the
10 proper use of a Taser device to secure an arrest given its inherent dangerous characteristics and
11 capacity to cause severe injury and death to a human being. The failure of the City and the
12 Police Department to adopt and implement appropriate policies, rules and regulations
13 governing the use of the Taser device, amounts to a reckless disregard and/or a deliberate
14 indifference to the safety of arrested persons, the effect of which deprived Brooks of her right to
15 be free from the use of excessive force upon her person, in violation of her civil rights under
16 the First, Fourth, Eighth and Fourteenth Amendments to the Constitution of the United States,
17 and 42 U.S.C Section 1983.

18 **VIII. FOURTH CLAIM FOR RELIEF**
19 **(Negligence as Against the City of Seattle and the**
 Seattle Police Department Under State Law)

20 8.1. Plaintiff incorporates by this reference paragraphs 1.1 through 7.6 above.

21 8.2 At all times mentioned herein, these defendants were subject to a duty of care
22 under state law allowing and causing unnecessary and excessive physical harm and distress to
23 citizens in the exercise of the police function. The conduct of these defendants as set forth

1 herein did not comply with the standard of care to be exercised by reasonable police officers,
2 thus, these defendants, and each of them, breached their duty of care.

3 8.3 As a direct and proximate result of the negligence of these defendants the
4 plaintiff Brooks has been damaged as more fully described below.

5 **IX. FIFTH CLAIM FOR RELIEF**
6 **(Negligent Supervision and Training as Against the City of Seattle and**
7 **The Seattle Police Department Under State Law)**

8 9.1 Plaintiff incorporates by this reference paragraphs 1.1 through 8.3 above.

9 9.2 Upon information and belief, defendants City of Seattle and the Seattle Police
10 Department had prior notice of the inherent dangers of using the Taser in the performance of
11 the police function.

12 9.3 The City of Seattle and the Seattle Police Department have a mandatory duty to
13 properly and adequately train and supervise officers and personnel under their control so as to
14 avoid unreasonable risk of harm to citizens.

15 9.4 The City of Seattle and the Seattle Police Department breached their duty of care
16 to citizens in that it failed to adequately train and supervise their officers by having inadequate
17 training and supervisory procedures regarding the use of Tasers and the use of deadly and non-
18 deadly force to apprehend suspects.

19 9.5 As a direct and proximate result of the negligence of these defendants the
20 plaintiff Brooks has been damaged as more fully described below.

21 **SIXTH CLAIM FOR RELIEF**
22 **(For Assault and Battery Against Daman, Jones and Ornelas**
23 **in Their Individual Capacities Under State Law)**

24 10.1 Plaintiff incorporates by this reference paragraphs 1.1 through 9.5 above.

25 10.2 The individual police officers, Daman, Jones and Ornelas, willfully, wantonly,

1 and oppressively, without justification or privilege, repeatedly assaulted and battered Brooks
2 and her unborn child by repeatedly administering the Taser to her body while placing her under
3 arrest.

4 10.3 As a direct and proximate result of this unjustified use of excessive force,
5 Brooks has suffered damages as more fully described below.

6 **XI. DAMAGES**

7 11.1 Plaintiff incorporates by this reference paragraphs 1.1 through 10.3 above.

8 11.2 As a direct and proximate result of the acts and omissions of the defendants, and
9 each of them, as more fully described above, Brooks has suffered damages for deprivation of
10 her civil rights and for mental and physical pain and suffering, disfigurement, scarring,
11 humiliation, and loss of the enjoyment of life in an amount to be proved at trial.

12 11.3 The repeated use of the Taser device on Brooks by Jones, with the active
13 assistance of Ornelas and at the direction of Daman, was extreme and outrageous and exceeded
14 all bounds of decency in a civilized society, thereby entitling Brooks to damages for intentional
15 infliction of emotional distress and outrage in an amount to be proved at trial.

16 11.4 The acts of the individual police officers, Daman, Jones and Ornelas, as herein
17 alleged were willful and malicious and done with the intent to harm, injure and oppress Brooks
18 who is entitled to punitive damages against each of them in a sum sufficient to deter such future
19 conduct and in an amount to be proved at trial.

20 **XII. JURY DEMAND**

21 12.1. Brooks demands a jury trial.

22 **XIII. ATTORNEY'S FEES**

23 13.1. Brooks is entitled to an award of attorney's fees according to 42 U.S.C. § 1988

1 and other applicable state law.

2 **XV. PRAYER FOR RELIEF**

3 WHEREFORE, plaintiff prays for judgment as follows:

4 **As to the Federal Claims:**

- 5 1. For compensatory damages in an amount to be proved at trial;
- 6 2. For punitive damages against the individually named officers, Daman, Jones and
- 7 Ornelas;
- 8 3. For special damages;
- 9 4. For reasonable attorney's fees pursuant to 42 U.S.C. §§ 1983 and 1988;
- 10 5. For costs of suit incurred herein; and
- 11 6. For such other and further relief as this Court deems just and proper.

12 **As to the State Claims:**

- 13 1. For compensatory damages in an amount to be proved at trial;
- 14 2. For general damages in an amount to be proved at trial;
- 15 3. For special damages;
- 16 4. For an award of reasonable attorney's fees;
- 17 5. For cost of suit incurred herein; and
- 18 6. For such other and further relief as the Court deems just and proper.

19 DATED this 20th day of November, 2006

20 ERIC ZUBEL, P. C

21 By 

22 Eric Zubel, ESQ., WSBA # 33961
23 Attorney for Plaintiff

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